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Supreme Court of the United States

October Term, 1943.

No. 519

UNITED STATES *ex rel.* ROBERT E. LEE JORDAN
Petitioner,

against

HAROLD L. ICKES, Secretary of the Interior.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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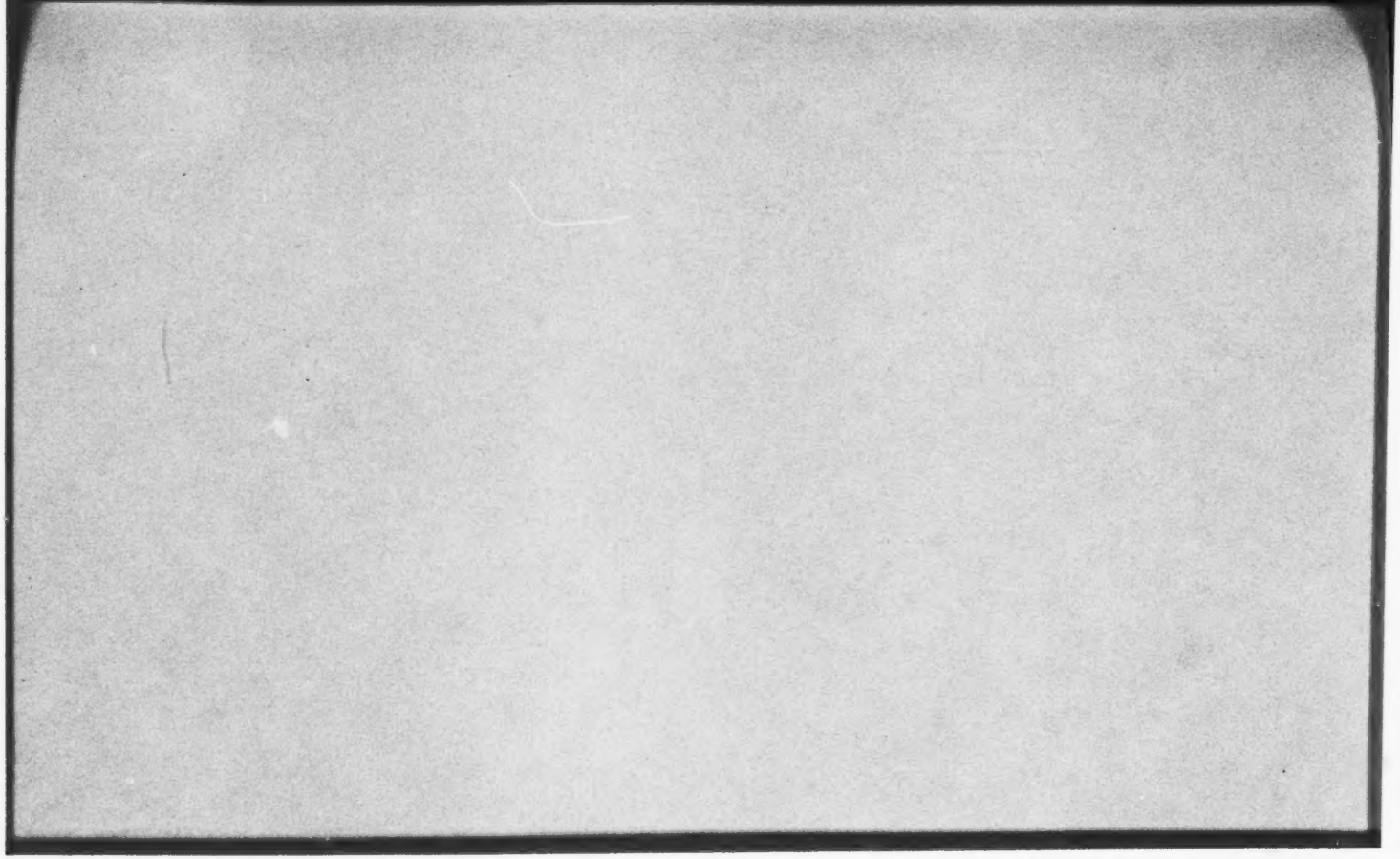

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Supreme Court of the United States

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No. .....

UNITED STATES *ex rel.* ROBERT E. LEE JORDAN,
Petitioner,
against
HAROLD L. ICKES, Secretary of the Interior.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

This is a petition for writ of certiorari to review the judgment of the District Court for the District of Columbia prior to the decision on appeal by the United States Court of Appeals for the District of Columbia and prior to a hearing or submission of the cause in the latter court.

Jurisdiction.

The jurisdiction of this Court is invoked under section 240(a) and sub-section 8(b) of The Judicial Code as amended by the Act of February 13, 1925, chap. 229, 43 Stat. 936.

Questions Presented.

1. This case raises for the first time the question of the ownership of and title to the submerged lands off the west

coast of California, within the three-mile limit, covered at all times by the territorial waters of the United States, which were acquired from Mexico by the United States by conquest, purchase, and cession in 1848 and confirmed by the Treaty of Guadalupe Hidalgo.

2. It raises the question as to the ownership and/or reservation of any and all minerals which are or may be found deposited in the submerged lands off the west coast of California within the three mile limit.

3. It raises the question of the interpretation of the Oil Land Leasing Act of 1920, 41 Stat. L. 437, as amended, 1935 49 Stat. L. 674.

Did Congress, under the terms of the Act and its amendment, confer upon or grant to the Secretary of the Interior the authority and/or discretion

(a) To determine as a matter of law, that the title to and ownership of, the submerged lands, off the west coast of California within the three mile limit, was in the State of California;

(b) To determine as a matter of law, that the deposits of oil, gas, and other minerals in the submerged lands, off the west coast of California within the three mile limit, belong to the State of California;

(c) To determine as a matter of law that the Department of the Interior had no jurisdiction to grant leases of the submerged lands within the three mile limit off the west coast of California when Congress had made no grant of the said lands to that State;

(d) To determine as a matter of law that Appellee had the right to deprive itself of jurisdiction over parts of the public domain, by denying the United States Government's ownership of the submerged lands, within the three mile limit off the west coast of California, and thereby to forfeit the right, title, and interest of

the United States Government to the said submerged lands and minerals therein;

(e) To nullify Appellant's legal right to leases of unreserved parts of the public domain, the submerged lands within the three mile limit off west coast of California, after Appellant had complied with the provisions of the Act and regulations of the Department of the Interior by rejecting Appellant's applications solely upon legal grounds and subsequently suspending action on Appellant's appeals for more than six years;

(f) To determine as a matter of law that Appellee had the right to suspend action upon the appeals of the Appellant for a period of more than six years, with no attempt to resolve the legal questions involved during that period of time, which has, due to the dilatory inaction of the Appellee, resulted in tremendous loss to the Appellant and the United States Government, by condoning the exploitation and drainage of Plaintiff's discovery of an oil structure by others, and preventing the development of new oil and gas fields which are urgently needed;

(g) To claim such unlimited discretion under the Act with respect to the granting of leases, as to be able to nullify the operation of the Act at Appellee's whim, when the only discretion granted Appellee under the Act, was to make the "necessary and proper rules and regulations" to effectuate the Act as amended.

Statement.

This suit originated as the result of the filing of two applications by the Petitioner with the General Land Office of the Department of the Interior on April 6, 1937, for prospecting oil and gas leases under the Oil Land Leasing

Act and amendments, and the regulations of the Department of the Interior, as set out in Circular No. 1386, on submerged lands off the west coast of California within the three mile limit. These applications were rejected upon a legal finding by the General Land Office, that the submerged lands belonged to the State of California and the Department of the Interior had no jurisdiction to grant leases thereof. On August 6th, 1937, the Petitioner filed appeals from the decision of the General Land Office, to the Secretary of the Interior. These appeals are still pending before the Secretary of the Interior. After waiting from August, 1937, to June 16th, 1942, for some action to be taken, Petitioner filed suit in the District Court for the District of Columbia asking for a declaratory judgment that the title to and ownership of the said submerged lands and the minerals therein, off the west coast of California and within the three mile limit was in the United States and under the jurisdiction of the Department of the Interior and prayed for coercive relief in order to secure action upon the appeals and execution of the leases, as Petitioner had complied with all the requirements of the Act and regulations of the Department of the Interior in force at the date of filing said applications. (Appellant's R. pp. 1 to 5 inclusive.)

In answer to the Petitioner's suit, in the District Court of the United States for the District of Columbia, the Secretary of the Interior filed a motion for summary judgment, supported by an affidavit setting out that the question as to the title to the submerged lands was being investigated by the Department of Justice. Your petitioner submitted certain evidence to the District Court taken from certain Congressional Committee records which indicated that the affidavit in support of the motion for summary judgment was not made in good faith; that there had been no action taken by the Department of the Interior or

the Department of Justice for a period of more than five years at the time of the filing of the action, and that no action by either the Department of the Interior or the Department of Justice had been taken since the filing of this suit; that the expressed desire on the part of the Department of the Interior and the Department of Justice, as set out in the evidence submitted, that the legal questions, herein raised, be resolved, by the Supreme Court of the United States lacked the essential elements of good faith, as evidenced by the motion for summary judgment seeking to prevent such determination.

Assignment of Error.

The District Court for the District of Columbia clearly erred we submit, in holding Appellant acquired no interest or legal right in the leases applied for under the Act and its amendment, when the Act "directs" leases to be executed to citizens upon compliance with amended Sec. 13 of the 1935 Amendment and the regulations of the Department of the Interior. In holding Appellant acquired only a privilege and not a right to leases upon compliance with the provisions of the Act; in holding that there were no material facts at issue; in failing to hold the inaction of the Appellee for more than six years to determine Appellant's rights to a lease was arbitrary and capricious or to grant coercive relief; in failing to take judicial notice of the lack of good faith on the part of the Appellee in suspending and withholding action for more than six years, Federal Rules of Civil Procedure No. 56(g); in failing to note the limitations upon the self-asserted claim of the Appellee to discretion, which the Act does not grant to Appellee; in failing to grant the relief prayed for under the declaratory judgment act, Federal Rules of Civil Procedure No. 57, and in granting summary judgment.

Your Petitioner does not at this time set forth all of the points which may be urged in the arguments on the merits of this cause should the writ be granted, but, in order to comply with the rules of this Court requiring that all issues upon which decision is requested be presented in the petition for certiorari, your Petitioner presents herewith as a part of this petition his brief for consideration with the petition discussing the questions involved, which include all the matters presented in it's assignment of errors on appeal to the United States Court of Appeals for the District of Columbia, as set out in Appellant's brief, and particularly to pages 25, 26, 29, 30, and 31 of the Appendix attached thereto.

Summary of Argument.

The provisions of the Oil Land Leasing Act of 1920, 41 Stat. L. 437, as amended in August, 1935, 49 Stat. L. 674, U. S. C. Title 30, ch. 3, para. 181, *et seq.*, set out the purpose of the Act and the requirements of those who desire to secure leases under the Act and its amendment. The pertinent provisions of the Act are set out in Appellant's Brief, herewith submitted, under Point I, pp. 8, 9, 10, and 11, and Point VI, pp. 28, 29, 30, and Appellant's Appendix, attached to the Brief on pp. 11, 14, 15, and 16. It is clear from the wording of the Act and the Amendment, and the regulations issued by the Department of the Interior, Circular No. 1386, the pertinent provisions of which are set out as an Appendix to this application for writ of certiorari that an applicant being a citizen and complying with the terms of the law and the regulations, is entitled to a lease.

Under the rule of the Department of the Interior, Plaintiff's Appendix to Appellant's Brief, pp. 7, 8, 9 10 and 11, that California owned the submerged land off the west coast of California and within the three mile limit, the question of how and by what means California acquired

the title to these submerged lands would seem pertinent. California did not acquire these submerged lands by conquest, purchase, or cession, from Mexico. California was non-existent as a State at the time the United States Government did acquire the territory from Mexico. California did not purchase the submerged lands from the United States Government and Congress, which under Article IV, section 3, of the Constitution, Appendix to Plaintiff's Brief, p. 17, has the sole right to dispose of the territory of the United States never included the submerged lands in any grant to California. California by the terms of the Enabling Act, section 3, Appendix to Appellant's Brief, p. 13, as a condition precedent to its admission to Statehood, waived all claims to the public land in the territory embraced within the limits of the now State of California. (Appellant's R. 57-58, 61-62.)

"The Government and its grants are the true source of title to all lands in this country." Worcester v. Georgia, 6 Peters 515; U. S. v. Castrillero, 17 U. S. L. Ed. 360; Parkinson v. Bracken, 39 Am. Dec. 296; Wilcox v. Jackson, 10 U. S. L. Ed. 264; Haydenfell v. Daney Gold Min. Co., 93 U. S. 634; Hicks v. Bell, 3 Calif. 227; Record, pp. 59-60, 66, 67, 68, 69, and 70. The Department of the Interior, notwithstanding its ruling that the submerged lands off the west coast of California, within the three mile limit, belonged to the State of California, admitted through the testimony of the Assistant Solicitor of the Department of Interior, Harry M. Edelstein, in 1937, that it was uncertain as to whether or not its decision was correct, and stated that it was the desire of the Department of the Interior that the question of title to the submerged lands be submitted to the United States Supreme Court. Record, pp. 94 to 99, inclusive. Further reference is made to Appellant's Brief, pp. 11 to 17, inclusive. A search of all Congressional grants does not reveal any grant of the sub-

merged lands off the west coast of California to California and the records of the Department of the Interior show no selection or patent of the submerged lands to California. (Appendix to Appellant's Brief, pp. 16 and 17.) It appears under the foregoing circumstances that the question of title should be resolved at this time.

The question of jurisdiction of the Secretary of the Interior over the public domain is fully covered in Appellant's Brief under Point III, pp. 18, 19 and 20. There is no authority under the Act or any other law under which the Secretary of the Interior can by a legal finding, divest the United States of its title to the public domain and thereby deny jurisdiction. A mistake in the law by the Secretary does not remove the land from his jurisdiction. West vs. Standard O. Co., 278 U. S. 200.

It has always been the policy of the United States to reserve to itself all minerals, wherever they may be found in the public domain; that grants of land do not convey mineral rights, unless they are specifically included. The courts have ruled that oil and gas are minerals and, therefore, would come within the purview of the established policy of the Government to except them from all grants (Appellant's R. pp. 59-60.) No act of Congress has granted to the State of California the minerals which are or may be found in the submerged lands off the west coast of California. Reference is made to Point IV, pp. 21, 22 and 23 of Appellant's Brief.

A vital question of law is raised by the self-asserted claim of the Secretary of Interior to discretion with reference to the granting of oil and gas leases. (Appellant's App. p. 15.) There seems to be nothing in the Oil Land Leasing Act, or its amendment of 1935, which grants to the Secretary the powers which he claims, under color of discretion. The only authority which he has, in the matter

of discretion, must be found in the Act and its amendment. There is nothing in the Act and its amendment to justify the making of legal decisions by the Secretary of the Interior; which authorized him to deny his jurisdiction over the public domain, by virtue of his own legal decision, which was erroneously based on tide and not submerged land; to deny the legal right of an applicant, who has complied with the law and the regulations of the Department of the Interior to secure leases; or which grants him the legal right to refuse to act upon appeals for a period of more than six years. The argument in support of these propositions will be found under Point V of Appellant's Brief, pp. 24, 25, 26, 27 and 28.

The courts have uniformly held the right to review the decisions of the Department of the Interior on matters of law. The arguments and authorities appear in Appellant's Brief, pp. 33 and 34, and Appellant's Record, pp. 70, 71, 75 and 76.

The proof of bad faith alleged by the Appellant is set forth in the Record, pp. 43-4-5, 71-2-3, 84-5-6, 94-5-6-7-8-9, 100-101, 103 and 104, and in Appellant's Brief, Point IX, pp. 34-5-6-7. It has been well established by the evidence presented in the Record that it has not been or is the intention of either the Department of the Interior or the Department of Justice to take any action on the legal questions raised which have been held in suspense from 1937 to date. It further raises the question of the duty of the Secretary of the Interior to conserve the oil resources of the Nation under Section 17 of the amended Act. (Appellant's Brief, p. 37.) There can be no justification whatsoever for the intentional refusal of the Department of the Interior to resolve the questions involved relative to Appellant's applications and appeals, which merit the consideration and decision of this Honorable Court.

In view of the bad faith established by the Record, under Federal Rules of Civil Procedure No. 56(g), the Court was in error in granting summary judgment (R. 82). The Court also was in error in failing to consult the provisions of the Act and particularly the amendments of 1935, and the material issues raised by the petition of Appellant. These points are covered under Point X of Appellant's Brief on pp. 37-8-9.

The Appellant under the law was entitled to coercive relief under the Declaratory Judgment Act, Federal Rules of Civil Procedure No. 57, Record, pp. 76-7-8-9-80-81, and cases cited in support thereof, by reason of the failure of the Appellee to take any action on Appellant's appeals for six years thereby denying Appellant's legal rights, and upon the legal grounds that the provisions of the Act and the requirements of the Department of the Interior, as set out in their Circular No. 1386, attached as an appendix, had been fully met, which points are presented in Appellant's Brief under Point XI, pp. 39, 40 and 41, and Appellant is entitled to relief.

The errors of the District Court as they appear in the opinion of the Court, Appellant's Appendix p. 21, consist in the failure to consider the amended Act of 1935 and the fact that Congress added the word "directed" to the Act, requiring the Secretary to act, and that the decisions quoted in support of the opinion were decisions made prior to the passage of the amendment to the Act in 1935 and that the cases cited as analogous were not so and did not cover the vital points at issue. These points appear under Appellant's Brief Point XI, pp. 41, 42 and 43.

It seldom occurs that Congress, by subsequent acts, interprets its own legislation, but in the case of the Oil Land Leasing Act it has done so in no uncertain terms. Congress changed the verbiage of the Act by the 1935 amendment

and in addition to the word "authorized," which expressed the power granted under the original Act of 1920, added the words "and directed" (Sec. 13 of the amended Act), and to confirm its understanding and its interpretation of these added words, it (Congress) passed several public acts using the same terminology "authorized and directed" and ordered the Department of the Interior to grant certain specified leases as shown by Public Law #371, 75th Congress, ch. 77, and Public Law #151, 77th Congress, ch. 74, par. 1, thus eliminating any possibility of the courts holding a contrary view of Congressional intent, to "direct" the Secretary of the Interior to issue leases. This interpretation should set at rest the self-asserted claim of the Secretary of the Interior, that any discretion was conferred upon him by the Act, other than that specifically granted, to make the necessary rules and regulations, to effectuate the law.

Reasons for Granting the Writ.

It is important to the United States Government that the question of title and ownership of the submerged lands off the west coast of California, within the three mile limit, be decided in order that it be determined if they are a part of the public domain and subject to be leased by citizens of the United States who qualify under the terms of the Oil Land Leasing Act of 1920, as amended in 1935. This question is presented for the first time for the adjudication of this Honorable Court.

It is in the interests of the United States Government and Appellant that the ownership of minerals, including oil and gas, which are or may be found in the submerged lands off the west coast of California within the three mile limit be determined, and if they are, according to the general policy of the United States Government with respect

to minerals, owned and reserved to the United States Government.

It is of vital interest to the United States Government and Appellant that the authority and/or self-asserted discretion claimed by the Secretary of the Interior under the Act and its amendment of 1935 should be interpreted and defined in accordance with congressional action. It should be determined if the Secretary has such power and authority that he may, by a legal decision, divest the United States Government of ownership of parts of the public domain; deny jurisdiction over parts of the public domain, and if he has the legal right, to suspend action on appeals for six years; to vitiate the purpose of the Act by withholding decision. It is essential that it be determined whether the will of Congress as expressed in the terms of the Act and amendment, represent the law or whether the Secretary of the Interior, acting under his self-asserted claim of discretion, may set at naught the Act and prevent the leasing of oil lands at his pleasure.

It is in the interests of the United States and the general public that all obstructions to the leasing of oil land, the production and development of new sources of supply, should be removed, including that of the Secretary of the Interior, by a decision of this Honorable Court.

It is exceedingly important that the authority of the Department of the Interior under the Act and its amendment be so defined that there may never be a reoccurrence of a situation such as in the instant case.

It is important that the dicta decisions of the courts, regarding the ownership of and title to the submerged lands and the extent of the public domain, included in the territory ceded by Mexico to the United States, be reviewed and made to conform to the acts of Congress and grants made by Congress, with reference to the public domain.

It would appear that a reaffirmation of the previous decisions of this Honorable Court, that legal decisions and mistakes of law made by the Secretary of the Interior, are not binding but are subject to review by the courts.

Conclusion.

The questions raised by this case are of first importance and in part have never before been submitted to the Supreme Court. An early authoritative decision on these questions is of pressing need, for in the last analysis the question of title to the submerged lands and the minerals therein, and the interpretation of the Oil Land Leasing Act and its amendments must be ruled upon by the Supreme Court. Your Petitioner has been deprived of his oil and gas rights for a period of more than six years; the United States, the owner of the oil and gas deposits in the submerged lands, has been deprived of the oil which is so necessary now for the conduct of the war; the necessity for conservation of the oil resources which are and have been drained by operators holding no leases from the Department of the Interior over the last six years should be determined without further delay; and the issue of certiorari before a hearing or decision of United States Court of Appeals for the District of Columbia is clearly in order.

Wherefore, your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the District of Columbia, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; that the District Court of the United States for the District of Columbia be reversed by this Honorable Court; and judgment entered in favor of the Petitioner, and your Petitioner prays for such

other and further relief in the premises as to this Honorable Court may seem meet and just.

November 24th, 1943.

Respectfully submitted,

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APPENDIX.

Federal Rules of Civil Procedure.

Rule No. 56(g).

Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

CIRCULAR NO. 1386.

Regulations Under Sections 13, 14, 17, and 28 of the Act of February 25, 1920, as Amended by the Act of August 21, 1935.

UNITED STATES DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE,
Washington, May 7, 1936.

REGISTERS,
U. S. Land Offices.

SIRS: By the act approved August 21, 1935 (49 Stat. 674), sections 13, 14, 17, and 28 of the leasing act of February 25, 1920 (41 Stat. 437), were amended. A copy of the act is appended hereto.

This act changes materially the system of disposing of the oil and gas resources on the public domain in the United States and Alaska, chiefly, by providing for the issuance of leases instead of prospecting permits for unproven oil and gas lands.

In general, the amended act authorizes and directs the Secretary of the Interior to issue oil and gas prospecting permits on applications filed 90 days or more prior to its approval. Applications for prospecting permits filed after 90 days prior to the date of the act shall be considered as applications for leases. All lands subject to disposition under the leasing act which are known or believed to contain oil and gas deposits may be leased in units of not exceeding 640 acres to the highest responsible qualified bidder by competitive bidding under general regulations, except that the first qualified applicant for lease of lands not within a known geologic structure of a producing oil or gas field and applicants for permits whose applications were filed after 90 days prior to the date of the act are entitled to preference rights over others to lease such lands without competitive bidding.

* * * * *

The following rules and regulations are prescribed for the administration of the amended sections of the act, existing oil and gas regulations to continue in force except as modified by the amendatory act and by these regulations:

* * * * *

LEASES WITHOUT COMPETITIVE BIDDING.

9. *Preference right to lease.*—A preference right over others to a lease without competitive bidding is granted under section 17, as amended, to—

(*a*) The persons first making application for the lease of any lands not within any known geologic structure of a producing oil or gas field who is qualified to hold a lease under the act.

(*b*) Applicants for permits whose applications were filed after 90 days prior to the effective date of the amendatory act.

10. *Applications for leases.*—Applications for leases of lands not within the known geologic structure of a producing oil or gas field may be filed in the proper district land office, or in States in which there is no district land office, in the General Land Office, addressed to the Commissioner of the General Land Office. Such applications when filed will be promptly noted of record, the date and exact hour of filing noted thereon, and where filed in the district land office, promptly forwarded to the General Land Office with a report as to the status and conflicts. No specific form of application is required and no blanks will be furnished, but such application must be under oath of the applicant, or if sworn to by his attorney in fact, the power of attorney and the applicant's own affidavit as to his citizenship and holdings must be attached thereto.

The application must cover in substance the following points:

(*a*) The applicant's name and address.

(*b*) Statement as to citizenship: In case of an individual, whether native born or naturalized and, if naturalized, date of naturalization, court in which naturalized, and number of certificate if known; if a corporation, by certified copy of the articles of incorporation and a showing as to residence and citizenship of the stockholders.

(*c*) A statement of the interests, direct and indirect, held by the applicant in permits and leases, and applications therefor, in the same State, identifying the records wherein such interests may be found.

(*d*) Description of the lands for which a lease is desired, which may not exceed 2,560 acres as nearly compact in form as possible and should involve only one geologic structure, describing the lands by legal subdivisions if surveyed or, if not surveyed, by the approximate subdivisions and metes

and bounds description connected with a corner of the public surveys by courses and distances.

(*e*) A statement that to the best of applicant's knowledge and belief the lands applied for are not within the known geologic structure of any producing oil or gas field and are believed to contain oil and gas.

(*f*) The names and addresses of three references as to the applicant's reputation and business standing.

(*g*) A statement that the applicant is ready to pay in advance the annual rental under the lease, and to furnish such bond or bonds as may be required under the lease or regulations.

Payment of a bonus for leases made without competitive bidding will not be required for the present.

11. *Leases based on permit applications.*—Applications for permits filed after May 23, 1935, are considered as applications for leases under section 17 of the amended act. Such leases are subject to the acreage limitations of section 27 of the act and, if otherwise regular, will be issued without bonus requirement at the royalty rate provided in section 17 hereof and at a rental as provided in section 15 hereof.

12. *Conflicting applications for leases.*—Should more than one application for lease of the same lands be filed, the applications will be considered in the order filed and a lease granted to the qualified applicant first in point of time in filing application. If two or more applications are filed simultaneously, the right to lease will be determined pursuant to existing regulations governing simultaneous filings of applications for oil and gas prospecting permits. (See circular 1320, 54 I. D. 400.)

* * * * *

19. *Drainage.*—Upon determination that wells drilled upon lands not owned by the United States are draining oil or gas from lands or deposits owned in whole or in part by the United States, the Secretary of the Interior may negotiate agreements whereby the United States or the United States and its permittees, lessees or grantees shall be compensated for such drainage, such agreements to be made with the consent of any permittees and lessees affected thereby.

No. 619

In the Supreme Court of the United States

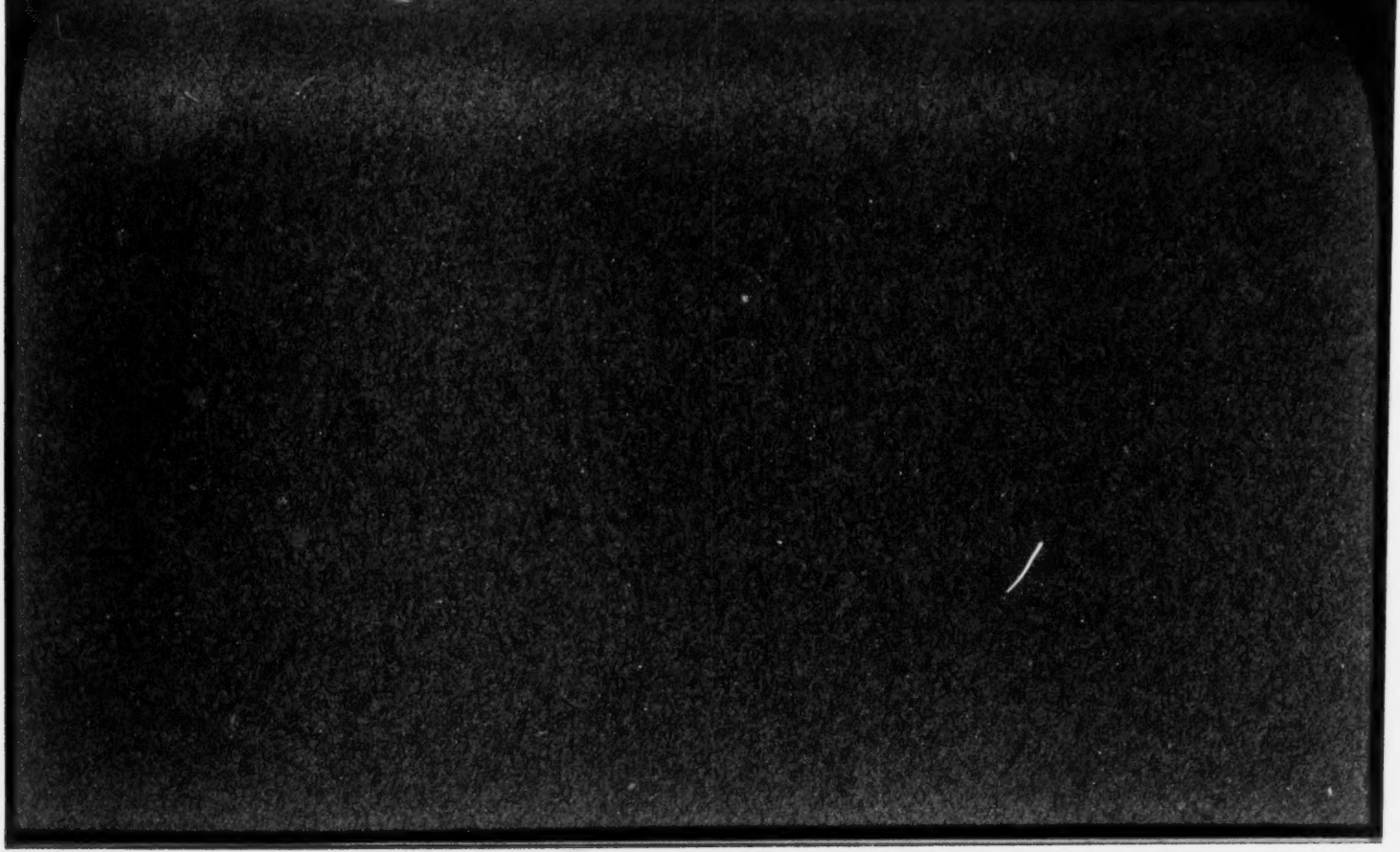
OCTOBER TERM, 1949

UNITED STATES [illegible]

HAROLD L. [illegible]

ON PETITION [illegible]
STATES [illegible]
COLUMBIA

[illegible]



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565090—43

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 519

UNITED STATES EX REL. ROBERT E. LEE JORDAN,
PETITIONER

v.

HAROLD L. ICKES, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the district court (R. 21–24)[1] is not yet reported.

JURISDICTION

The judgment of the district court sought to be reviewed was entered March 3, 1943 (R. 25).

[1] Record references are to portions of the record printed as an appendix to petitioner's brief in the court of appeals.

Motion for rehearing (R. 25–26) was denied April 8, 1943 (R. 28). The petition for a writ of certiorari was filed December 1, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under the facts of this case, the Secretary of the Interior may be compelled to grant or to act upon petitioner's applications for leases under Section 17 of the Mineral Leasing Act.

STATUTE INVOLVED

Section 17 of the Mineral Leasing Act as amended by the Act of August 21, 1935, c. 599, 49 Stat. 674, 676–677 (30 U. S. C. sec. 226), provides:

> All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits, except as herein otherwise provided, *may be leased* by the Secretary of the Interior * * * to the highest responsible qualified bidder by competitive bidding under general regulations. * * *
>
> * * * * *
>
> *Provided further,* That the person first making application for the lease of any lands not within any known geologic structure of a producing oil or gas field who is qualified to hold a lease under this Act

> * * * shall be entitled to a preference right over others to a lease of such lands without competitive bidding * * *. [Italics supplied.]

STATEMENT

In substance, the complaint alleges: On April 6, 1937, petitioner filed in the General Land Office at Los Angeles two applications for oil and gas leases on submerged lands off the west coast of California and not within any known geological structure of a producing oil or gas field. On June 8, 1937, the General Land Office rejected these applications on the sole ground that the Department of the Interior was without jurisdiction to grant them. On August 6, 1937, petitioner appealed to the Secretary of the Interior and has diligently and persistently urged the Secretary to take action thereon but he has failed to do so. (R. 1–4.) The complaint prays for a finding that the submerged lands are owned by the United States and are a part of the public domain, a declaration that the submerged lands are within the jurisdiction of the Secretary of the Interior for the purpose of granting oil and gas leases thereon under the Mineral Leasing Act and amendments thereto, a writ directing the Secretary of the Interior to show cause why the appeals should be further held without determination, and an order directing him to grant the leases applied for (R. 4–5).

The Secretary filed a motion for summary

judgment. The motion shows that the Secretary has suspended action on the appeals pending legislative action and judicial determination with respect to the title and jurisdiction of the United States over submerged lands. (R. 18–19.) The district court granted the motion (R. 25), and petitioner appealed to the court of appeals (R. 29), where briefs have been filed and the cause is now pending hearing and decision.

ARGUMENT

Petitioner is not entitled to the relief which he seeks. The issue has been conclusively determined against his position in *Dunn* v. *Ickes,* 115 F. 2d 36 (App. D. C.), and this Court has refused further review. 311 U. S. 698. See also *United States* v. *Ickes,* 101 F. 2d 248 (App. D. C.); cf. *United States* v. *Wilbur,* 283 U. S. 414, 419–420. The instant case presents no additional reasons of substance for certiorari, and certainly there are no considerations which call for certiorari in advance of a decision by the Court of Appeals.

Respectfully submitted.

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